

COURT-I

In the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL NO. 42 of 2015 &
IA NOs. 44, 306, 307 of 2015

Dated : 11th May, 2016

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. T. Munikrishnaiah, Technical Member
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:-

M/s Jaipur Vidyut Vitran Nigam Ltd. & Ors.
Vs.

-Appellant(s)

Adani Power Rajasthan Ltd. & Ors.

-Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Jain, ASG
Mr. Nitish Gupta
Mr. Soyaib Qurishi

Counsel for the Respondent(s) : Mr. Raj Kumar Mehta
Mr. Abhishek Upadhyay and
Ms. Himanshi Andley for R.2/RERC

Mr. Amit Kapur
Ms. Poonam Verma
Mr. Gaurav Dudeja
Mr. Akshat Jain for Adani
Mr. Malav Deliwala (Rep.) for Adani

ORDER

The present appeal is filed against Order dated 30/5/2014 passed by the Rajasthan Commission in Case No.RERC-392/2013. By the impugned order, the Rajasthan Commission has held that Adani Power Rajasthan has not made out a case of *Force Majeure* and Change in Law under the PPA dated 28/1/2010. However, by the said impugned order, the Rajasthan Commission has held that the Adani Power Rajasthan nevertheless is entitled to be compensated for the

increase in cost of coal. The Rajasthan Commission has constituted a Committee to recommend a reasonable compensatory tariff that can be considered by the Commission in the facts of the case. The Rajasthan Commission has, as an interim measure, granted compensatory tariff of 25p per unit under Section 94(2) of the Electricity Act (“**the said Act**”).

In our Judgment dated 7/4/2016 in Appeal No.100 of 2013 and batch matters, we have held that the Appropriate Commission has no regulatory power to grant compensatory tariff to the generating companies where the tariff is discovered by a competitive bidding process under Section 63 of the said Act. We have also held that if a case of *Force Majeure* or Change in Law is made out, relief available under the PPA can be granted under the adjudicatory power of the Appropriate Commission.

Therefore, the Rajasthan Commission could not have granted any compensatory tariff under Section 94(2) of the said Act. Pertinently, in this case, the Rajasthan Commission has held that a case of *Force Majeure* or Change in Law is not made out.

In the circumstances, the Appeal is partly allowed. Impugned Order dated 30/5/2014 passed by the Rajasthan Commission in Case No.RERC-392/2013 is set aside except to the extent it holds that there is no *Force Majeure* and Change in Law under the Power Purchase Agreement dated 28/01/2010. We, however, make it clear that we have not examined whether a case of *Force Majeure* or Change in Law is made out or not. Accordingly, all connected IAs are also disposed of.

I.J. Kapoor
[Technical Member]

T. Munikrishnaiah
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]